



VIA FACSIMILE TRANSMISSION & FIRST-CLASS MAIL

February 9, 2005

The Honorable John Cornyn
United States Senate
517 Hart Senate Office Bldg.
Washington, DC 20510

The Honorable Patrick Leahy
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

Re: Open Government Act of 2005

Dear Senators Cornyn and Leahy:

On behalf of People For the American Way (PFAW) and its more than 675,000 members and supporters, I write in support of your efforts to strengthen the Freedom of Information Act (FOIA) and promote greater public access to government records through the proposed Open Government Act of 2005 (OGA).

Open government is a vital component of this country's democratic framework, allowing citizens to learn about the activities of their government and helping ensure government accountability. FOIA, which permits public access to federal records, has helped establish the public's right to obtain government information and created a strong presumption in favor of disclosure. Serious problems have arisen with full and timely agency compliance with FOIA and its goals, however, necessitating the types of important FOIA reforms contemplated in the OGA.

In particular, PFAW is supportive of the Act's use of penalties to enforce compliance with FOIA deadlines, particularly the provision imposing a presumptive waiver of FOIA exemptions when an agency fails to meet the 20-day production deadline, and the requirement that Congress be explicit when it considers creating additional exemptions under 5 U.S.C. 552(b)(3).

We also support the provision in the bill that would permit an award of attorney fees when a nonfrivolous lawsuit has served as the catalyst for voluntary disclosure of a substantial part of a FOIA request. It is imperative that a requester - who must incur litigation costs to enforce agency compliance with the law - be able to recover attorneys' fees and litigation costs in such cases, particularly in order to discourage arbitrary and unlawful agency rejections of legitimate FOIA requests.

Finally, we believe that the various recordkeeping and monitoring provisions of the Open Government Act - including monitoring of the Department of Homeland Security's use of its "critical infrastructure information" exemption and mandatory agency disclosure of the 10 oldest active requests - are useful and necessary to ensure the integrity of the open government process and to gather the information needed to modify and adjust our open government laws going forward.

We applaud your efforts to reaffirm the vital importance of open government in this country and believe that the Open Government Act is an encouraging first step toward that goal.

Sincerely,

Ralph G. Neas
President